

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Tax Case No. 10 of 1999(R)

Commissioner of Income Tax, Dhanbad Petitioner
Vs.
M/s. Ganesh Trading Company..... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Petitioner : Mr. Deepak Roshan, Sr. S.C.(I.T)
 Ms. Rupa Kumari, Adv.
For the Respondent : JC to J.K. Pasari

----- **Dated 20th September, 2012**

By Court

This Tax Case No. 10 of 1999(R) has been registered on receipt of reference under Section 256(1) of the Income Tax Act, 1961 and following question of law has been referred to this Court:

“Whether on the facts and in the circumstances of the case and in law, the ITAT was right in deleting the penalty levied under Section 271(1)(C) even though the income disclosed during search was deliberately not declared in the return.”

2. Learned counsel for the appellant-Revenue submitted that during the course of search, one of the partners of the firm voluntarily disclosed undisclosed income of Rs. 20 lakhs. On the basis of said declaration of the assessee's partner and after rejecting the defence of the assessee, the assessment order was passed by the assessing officer on 31st January, 1991 adding the undisclosed income of Rs. 20 lakhs. This assessment order

attained finality. The assessing officer in assessment order dated 31st January, 1991 directed to take proceeding under Sections 271(1)(a), 271(1)(c) and 271(2)(c) of the Act.

3. In pursuance of said order, the proceeding under Section 271(1)(c) was initiated and the assessing officer relying upon the order of assessment, which attained the finality, wherein assessing officer found assessee's undisclosed income of Rs. 20 lakhs and held that the assessee failed to disclose the facts in the return and thereby concealed the income of Rs. 20 lakhs, and imposed the penalty of Rs. 12 lakhs under Section 271 (1)(c) of the Act of 1961.

4. Learned counsel for the appellant submitted that the fact of declaration of undisclosed income by the assessee cannot be disputed by the assessee in view of the finality of the assessment order wherein this finding of fact has been recorded that the assessee himself has disclosed that he had undisclosed income of Rs. 20 lakhs. In that fact situation, no any further inquiry was necessary by the assessing officer and assessing officer rightly imposed the penalty under Section 271(1)(c) of the Act of 1961. Whereas the Tribunal has set aside that penalty only on the ground that no further inquiry was conducted by the assessing officer, which according to learned counsel for the respondent was not at all required in view of the admission of the assessee himself as well as in view of the finding of fact that has been recorded in the assessment

proceeding.

5. We considered the submission of learned counsel for the Revenue. We are of the considered opinion that purposefully the penalty has not been made automatic in the regular assessment proceedings and, therefore, it has been provided separately under Section 271 of the Act wherein it has been provided that during the course of any proceeding any assessing officer finds concealment of income, he may proceed under Section 271 of the Act. Admittedly, under Section 271, proceeding for imposition of penalty is a separate proceeding. Then proceeding cannot be treated to be a proceeding to complete a mere formality of giving opportunity of hearing to the assessee and the assessing officer is only required to virtually accept the order of the assessing officer without application of mind and without finding out whether it is a case of “concealment” of income which is the basis for levy of the penalty. Therefore, we are of the considered opinion that there must be either further enquiry or there must be application of mind to find out that the assessee has concealed the income and assessing officer cannot accept what has been recorded in the assessment order as the gospel truth.

6. We also perused the assessment order dated 31st January, 1991. It appears from the assessment order itself that during the course of assessment it was said on behalf of assessee that the said declaration was only because of

the pursuance of the searching officer and not because of assessee had any undisclosed income to be declared during the said year. Therefore, it is not a case where the assessee was not with any defence. His said defence has not been examined before passing penalty order by the assessing officer. In this fact situation, we are of the considered opinion that the learned Tribunal was justified in observing that the assessing officer before imposing penalty did not held any independent inquiry and no specific and concrete materials were brought on record by the assessing officer to establish the fact that the assessee had really concealed the amount. Learned Tribunal was also justified in the facts of the case, in observing that no material indicating any specif asset, investment or income to the extent of the said amount were brought on record.

Z. In view of above reasons, we are of the opinion that the Tribunal has not committed any error. Therefore, the question is answered that in the facts of the case, the ITAT was right in deleting the penalty levied under Section 271(1)(c).

(Prakash Tatia, C J)

(Jaya Roy , J)